

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.305 OF 2017

- 1 Hotel Devgiri Pvt. Ltd.,
Aurangabad, a company duly
incorporated under the Companies
Act, 1956, having its registered office
at K-2009, Chittaranjan Park,
New Delhi – 100019 and having
Corporate office at Rajendraprasad Marg,
Adalat Road, Aurangabad.
- 2 Loksangam Hotels and Resorts Pvt. Ltd.,
Pune, a company duly incorporated under
the Companies Act, 1956, having its
registered office at 108-110, Anil
Co-operative Housing Society 775,
Eravendwane, Pune-4,
Through its Director Rajesh s/o Sambhaji
Pawar, Age 39 yrs., Occ. Business,
R/o Villa No.1, Magarpatta City, Mandawa
Link Road, Pune.

... Appellants.

...Versus...

- 1 Laxminarayan s/o Shriramji Attal,
Age 57 yrs., Occ. Chartered Accountant,
R/o Flat No.9, Shrinath Apartment,
New Samarth Nagar, Aurangabad.
- 2 Sunita w/o Laxminarayan Attal,
Age 55 yrs., Occ. Household,
R/o Flat No.9, Shrinath Apartment,
New Samarth Nagar, Aurangabad.

... Respondents.

...

Mr. Mobin H. Shaikh, Advocate h/f Mr. V.R. Dhorde, Advocate for the
appellants

Mr. L.D. Vakil, Advocate for the respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th FEBRUARY 2019

ORAL JUDGMENT :

1 Heard both sides. The present appellants are the original plaintiffs, who had filed Special Civil Suit No.425/2017 before 3rd Joint Civil Judge Senior Division, Aurangabad for cancellation of sale deed executed by plaintiffs in favour of defendants and also for recovery of the possession. The defendants appeared in the matter and contested the suit. After both the parties have led evidence, the learned Trial Court has dismissed the suit. Thereafter, the original plaintiffs intended to challenge the said Judgment and Decree in appeal before District Court, Aurangabad, however, there was delay of 123 days and for that purpose they preferred application under Section 5 of the Limitation Act in M.A. (R.J.I.) No.75/2016. The same was heard by learned District Judge-12, Aurangabad and the said application has been rejected on 21.02.2017. The original plaintiffs have, therefore, filed this Second Appeal

challenging the said order of rejection of the application.

2 It has been submitted on behalf of the appellants that the learned First Appellate Court has not taken a liberal view, when the appellants had come with the specific case that the plaintiffs are having Head office at New Delhi and Pune and the person who was looking after the litigation at Aurangabad had expired. They were required to appoint another person and therefore the delay was caused. The delay was unintentional. The application was rejected on technical ground, that name of the person, who was looking after and who had expired, had not given. So also, the name of the person who was later on appointed, has also not been given. It was the error on the part of the learned First Appellate Court to reject the application on such technical ground.

3 The application has been strongly objected, on the ground that in say the respondents had specifically contended that the name of those persons were not given and when opportunity was given to the applicants, only pursis was filed at Exh.15, that the applicants do not want to lead any evidence. Under such circumstance, the learned First Appellate Court was justified in rejecting the application.

4 The learned Advocate appearing for the appellants has relied on the decision in **Collector, Land Acquisition, Anantnag and another**

vs. Mst. Katiji and others, (1987) 2 Supreme Court Cases, 107, wherein it has been held that the Courts should adopt a liberal and justice-oriented approach while dealing with application under Section 5 of the Limitation Act.

5 It is to be noted that though the specific contention was raised by the respondents in the application, the applicants have not given the name of the person, who was looking after the affairs at Aurangabad and who, later on expired and then has not given the name of the person, who was later on appointed. It is to be noted that plaintiff No.1 is a company incorporated under the Companies Act. Plaintiff No.2 is also a company duly incorporated under the Companies Act and it was stated that through the General Power of Attorney of plaintiff Nos.1 and 2 vide Company Board Resolution dated 31.01.2006, one Mr. Ramesh Munilal Kumaria was appointed as the person who had filed the suit. This citation is available in the Judgment of the Trial Court. Further, as regards application is concerned, it is stated that it has been filed through its Director Rajesh Sambhaji Pawar. At least, these two names were there available on record and they could have been taken into consideration by the learned First Appellate Court. The reasons mentioned while rejecting the application appears to be too technical. No doubt, opportunity was

given to the applicants to lead evidence, but on such technical reason, as stated in **Collector, Land Acquisition** (supra), it cannot be a justice-oriented approach. It ought to have been considered that there was delay of 123 days only and when plaintiffs were the company i.e. the juridical person will act through its directors. Under such circumstance, the delay cannot be said to be inordinate or huge and therefore, the delay ought to have been condoned and if at all any inconvenience would have been caused to the respondents, it could have been mitigated by imposing certain amount of costs. Therefore, instead of admitting the Second Appeal on the said point, it would be in the interest of the parties, to condone the said delay by allowing the Second Appeal and the directions can be given to the First Appellate Court to expedite the matter. Hence, following order.

ORDER

1 The Second Appeal is hereby allowed.

2 The order passed below Exh.1 in M.A. (R.J.I.) No.75/2016 by learned District Judge-12, Aurangabad on 21.02.2017 is hereby set aside.

3 The said application stands allowed, subject to deposit of

costs of Rs.5,000/-, by the present appellants, before the First Appellate Court, within a month from the date of this order. The said amount be given to respondent.

4 After the amount is deposited, the appeal before the First Appellate Court be registered.

5 The said appeal is hereby expedited.

6 The learned District Judge is directed to expedite the hearing of the said appeal, of course, after giving due notice to the respondents and to dispose it of, within one year from the registration of the appeal.

7 In view of this, Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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